

HOUSE BILL 567

By Marsh

AN ACT to amend Tennessee Code Annotated, Title 30;
Title 31; Title 32; Title 34 and Title 35, relative to
transfer of legal rights.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 30-2-307, is amended by adding the following new subsection:

If a claim filed against the decedent's estate is filed by a personal representative of the decedent's estate, the personal representative must provide the clerk of the court with the name and current mailing address of each residuary beneficiary of the decedent's estate at the time the claim is filed.

SECTION 2. Tennessee Code Annotated, Section 30-2-313, is amended by redesignating subsections (b) and (c) to be subsections (c) and (d), respectively, and adding the following as a new subsection (b):

If a personal representative of the decedent's estate files a claim against the estate of the decedent, the clerk of the court, within five (5) days after the filing of a claim and the entry thereof in the claim book as provided in § 30-2-312, shall give written notice to each residuary beneficiary of the decedent's estate of the filing of the claim, by mailing each a true and correct copy of the claim. The notice required by this subsection is in addition to the notice required to be given by subsection (a).

SECTION 3. Tennessee Code Annotated, Section 30-2-614(e), is amended by adding the following language to the beginning of the first sentence:

For a decedent dying before January 1, 2016,

SECTION 4. Tennessee Code Annotated, Section 30-2-713(c), is amended by deleting the subsection and substituting instead the following:

(c) The personal representative of an estate and trustees are authorized to enter into agreements with beneficiaries and with governmental authorities, agreeing to make distribution in accordance with this section for any purpose that they deem to be in the best interests of the estate, including the purpose of protecting and preserving the federal estate tax marital deduction for a decedent without regard to the decedent's date of death, or the state inheritance tax marital deduction for a decedent dying before January 1, 2016, as applicable to the estate. The guardian or conservator of a surviving beneficiary or the personal representative of a deceased beneficiary is empowered to enter into agreements pursuant to this subsection (c) for and on behalf of the beneficiary or deceased beneficiary.

SECTION 5. Tennessee Code Annotated, Section 30-4-103(5)(A), is amended by deleting the subdivision and substituting instead the following:

(A) The court may enter an order discharging the affiant and the sureties on the affiant's bond after the affiant files:

- (i) An affidavit that each debt of the decedent is paid; and
- (ii) For a decedent dying before January 1, 2016, either the tax receipt issued pursuant to § 67-8-420, or the certificate issued pursuant to § 67-8-409(f).

SECTION 6. Tennessee Code Annotated, Section 30-4-104(d), is amended by deleting the word "The" at the beginning of the subsection and by adding the following language to the beginning of the subsection:

For a decedent dying before January 1, 2016, the

SECTION 7. Tennessee Code Annotated, Section 31-1-103(c), is amended by deleting the second sentence and substituting instead the following:

Unless the donor of a gift or the creator of power has otherwise indicated in the document evidencing the gift or creating the power, the interest disclaimed passes to the donor or creator of the power.

SECTION 8. Tennessee Code Annotated, Section 31-1-106, is amended by deleting the section and substituting instead the following:

(a) For purposes of this section:

(1) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument;

(2) "Felonious and intentional killing" or "feloniously and intentionally kills" includes the felonious and intentional act of conspiring with another to kill or procure the killing of an individual decedent;

(3) "Governing instrument" means a governing instrument executed by the decedent; and

(4) "Revocable," with respect to a disposition, appointment, provision, or nomination, means one (1) under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate himself or herself in place of his or her killer and whether or not the decedent then had capacity to exercise the power.

(b) An individual who feloniously and intentionally kills the decedent forfeits all benefits with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property,

and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer predeceased the decedent.

(c) The felonious and intentional killing of the decedent:

(1) Revokes any revocable:

(A) Disposition or appointment of property made by the decedent to the killer in a governing instrument;

(B) Provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(C) Nomination of the killer in a governing instrument to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(2) Severs the interests of the decedent and killer in property held by the decedent and the killer at the time of the killing as joint tenants with the right of survivorship or as community property with the right of survivorship, transforming the interests of the decedent and killer into equal tenancies in common.

(d) A severance under subdivision (c)(2) does not affect a third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship of the killer, unless a writing declaring the severance has been noted, registered, filed, or recorded in records that are:

(1) Appropriate to the kind and location of the property;

(2) In the ordinary course of transactions involving the property; and

(3) Recorded as evidence of ownership.

(e) Provisions of a governing instrument are to be given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(f) A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(g) After all rights to appeal have been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent is conclusive evidence that the individual is the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, must determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(h)

(1)

(A) Before the payor or other third party receives written notice of a claimed forfeiture or revocation under this section, the payor or other third party is not liable for having:

(i) Made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing; or

(ii) Taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death.

(B) A payor or other third party is liable for a payment made or action taken after the payor or other third party received written notice sent pursuant to subdivision (h)(2)(A) of a claimed forfeiture or revocation under this section.

(2)

(A) Written notice of a claimed forfeiture or revocation under subdivision (h)(1) must be mailed to the payor's or other third party's main office or home by either:

(i) Registered or certified mail, return receipt requested; or

(ii) Served upon the payor or other third party in the same manner as a summons in a civil action.

(B) Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item or property held by the payor to or with the court having jurisdiction of the probate proceeding relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of the probate proceeding relating to decedents' estates in the county of the decedent's residence.

(C) The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the court's determination.

(D) Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(i)

(1)

(A) Except as otherwise provided in subdivision (i)(2), a person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is not obligated under this section to return the payment, item of property, or benefit, and is not liable under this section for the amount of the payment or the value of the item of property or benefit.

(B) A person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment or the value of the item of property or benefit to the person who is entitled to it under this section.

(2) If this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it as if this section was not preempted.

SECTION 9. Tennessee Code Annotated, Section 31-2-105, is amended by deleting the section and substituting instead the following:

(a) If, for purposes of inheritance under a will or trust or by intestate succession or contract, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) An adopted person is the child of an adopting parent and not of the natural parents, except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent; and

(2) In cases not covered by subdivision (a)(1), a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

(A) The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(B)

(i) The paternity is established by adjudication before the death of the father or is established thereafter by clear and convincing proof, but only if an assertion of paternity is made that seeks the adjudication within the earlier of:

(a) The period prescribed in the notice published or posted in accordance with § 30-2-306; or

(b) One (1) year after the father's death.

(ii) The paternity established under this subdivision

(a)(2)(B) is ineffective to qualify the father or the father's kindred to inherit from or through the child unless the father has openly treated the child as the father's, and has not refused to support the child.

(b) In no event is a parent permitted to inherit through intestate succession or under a will or trust or by contract until all child support arrearages together with any interest owed, at the legal rate of interest computed from the date each payment was

due, have been paid in full to the parent ordered to receive support or to the parent's estate if deceased.

(c) Nothing in this section prevents a child from inheriting from a parent through intestate succession.

SECTION 10. Tennessee Code Annotated, Title 31, is amended by adding the following as a new chapter:

31-7-101.

(a)

(1) The entry of a decree of annulment or divorce from the bond of matrimony on or after July 1, 2017, revokes any revocable beneficiary designation contained in a then-existing written contract owned by one (1) of the parties to the annulment or divorce that provides for the payment of any death benefit to the other party to the annulment or divorce. A death benefit prevented from passing to a former spouse by this section must be paid as if the former spouse had predeceased the decedent.

(2) The payor of any death benefit is discharged from all liability upon payment in accordance with the terms of the contract providing for the death benefit, unless the payor receives written notice of a revocation under this section prior to payment.

(3) A former spouse who, not for value, receives the payment of any death benefit to which the former spouse is not entitled under this section is personally liable for the amount of the payment to the person who is entitled to the benefit.

(4) If a beneficiary designation is revoked solely by this chapter, the beneficiary designation is revived by remarriage to the former spouse.

(b) Every decree of annulment or divorce from the bond of matrimony entered on or after July 1, 2017, must contain the following notice in conspicuous, bold print:

Except as provided in Tenn. Code Ann. § 31-7-101(d), beneficiary designations for any death benefit, as defined in Tenn. Code Ann. § 31-7-101, made payable to a former spouse will be automatically revoked by operation of law upon the entry of a final decree of annulment or divorce. If, following the annulment or divorce, a party intends to revoke any beneficiary designation made payable to a former spouse to which this section does not apply, the party is responsible for following any and all instructions to change such beneficiary designation given by the provider of the death benefit. Otherwise, existing beneficiary designations to which this section does not apply may remain in full force and effect after the entry of a final decree of annulment or divorce.

(c) Failure to include the notice in the decree of annulment or divorce, as provided by subsection (b), does not invalidate the annulment or divorce or the operation of this chapter.

(d) This chapter does not apply:

(1) To any death benefit governed by the Federal Employees' Group Life Insurance Act of 1954 (FEGSIA), the Employee Retirement Income Security Act of 1974 (ERISA), or any other federal statute that preempts this section;

(2) To the extent the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate between the two

(2) individuals before or after the marriage, divorce, or annulment provides for a contrary result as to specific death benefits; or

(3) To any irrevocable trust or any death benefit irrevocably payable to any beneficiary.

(e) For purposes of this chapter:

(1) "Death benefit" includes:

(A) Any payments under a life insurance contract, annuity, retirement arrangement, compensation agreement, bank or brokerage account that contain pay on death or transfer on death designations; or

(B) Other contract designating a beneficiary of any right, property, or money; and

(2) "Divorce or annulment" includes any divorce or annulment that would exclude the spouse as a surviving spouse within the meaning of § 31-1-102(b); "Divorce or annulment" does not include a decree of separation that does not terminate the marriage of the parties.

SECTION 11. Tennessee Code Annotated, Section 32-3-108(b) is amended by deleting the language "This" at the beginning of the first sentence of the subsection and adding the language to the beginning of the first sentence "For a decedent dying before January 1, 2016, this".

SECTION 12. Tennessee Code Annotated, Title 32, Chapter 3, Part 1, is amended by adding the following new section:

(a)

(1) Notwithstanding the requirements of a holographic will, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money,

evidences of indebtedness, documents of title, securities, and property used in a trade or business.

(2) To be admissible under this section as evidence of the intended disposition, the writing:

(A) Must be either in the handwriting of the testator or signed by the testator, and must describe the items and the devisees with reasonable certainty;

(B) May be prepared before or after the execution of the will;

(C) May be altered by the testator after its preparation; and

(D) May be a writing that has no significance apart from its effect upon the dispositions made by the will.

(3) If more than one (1) otherwise effective writings exist, the provisions of the most recent writing revoke any inconsistent provisions of each prior writing.

(b) A personal representative is not liable for any distribution of tangible personal property to the apparent devisee under the testator's will without actual knowledge of the existence of a written statement or list, as described in subsection (a), and the personal representative has no duty to recover property distributed without knowledge of the written statement or list. However, a person named to receive certain tangible personal property in a written statement or list, as described in subsection (a), may recover the property or its value, if the property cannot be recovered, from an apparent devisee to whom the property has been distributed, if an action to recover the property is brought within one (1) year after the probate of the testator's will.

(c) Receipts for items distributed according to the written list or statement, as described in subsection (a), are not required to be filed with the court.

SECTION 13. Tennessee Code Annotated, Section 34-1-117(f), is amended by deleting the language "14" and substituting instead the language "8".

SECTION 14. Tennessee Code Annotated, Title 34, Chapter 6, Part 1, is amended by adding the following as a new section:

(a) Except as provided by the express terms of a durable power of attorney, a court order, or a contract relating to the division of the marital estate between the two (2) individuals before or after the marriage, divorce, or annulment, the entry of a decree of annulment or divorce from the bond of matrimony on or after July 1, 2017, revokes any appointment of a former spouse as an attorney-in-fact under a durable power of attorney.

(b) For purposes of this section, "divorce or annulment" includes any divorce or annulment that would exclude the spouse as a surviving spouse within the meaning of § 31-1-102(b). "Divorce or annulment" does not include a decree of separation that does not terminate the marriage of the parties.

SECTION 15. Tennessee Code Annotated, Section 35-15-402, is amended by adding the following subsection:

(d) A lifetime trust is valid as to any assets held by the trust to the extent the assets have been transferred to the trust. For purposes of this subsection (d):

(1) Assets capable of registration, such as real estate, stocks, bonds, bank and brokerage accounts, and the like, are transferred to the trust through the recording of the deed or the completion of registration of the asset in the name of the trust or trustee. Assets that are capable of registration are not transferred to the trust through only a recital of assignment, holding, or receipt in the trust instrument; and

(2) Assets not capable of registration, are transferred to the trust through a recital of assignment describing the asset with particularity in the trust instrument.

SECTION 16. Tennessee Code Annotated, Title 35, Chapter 15, Part 6, is amended by adding the following new section:

(a) Unless a trust expressly provides otherwise, after executing a revocable trust, if the sole settlor is divorced or the sole settlor's marriage is annulled, the divorce or annulment revokes any:

(1) Disposition or appointment of property made by the trust to the former spouse;

(2) Provision conferring a general or special power of appointment on the former spouse; and

(3) Nomination of the former spouse as trustee or other fiduciary.

(b) Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the settlor, but § 32-3-105 does not apply. Any other provision of law conferring some power or office to a former spouse is construed as if the former spouse failed to survive the settlor.

(c) If a provision in a trust is revoked solely by this section, the provision is revived by the settlor's remarriage to the former spouse.

(d) No change of circumstances other than as described in this section and § 35-15-602 revokes a trust.

(e) This section applies to the entry of a decree of annulment or divorce from the bond of matrimony entered on or after July 1, 2017.

(f) For purposes of this section, "divorce or annulment" includes any divorce or annulment that would exclude the spouse as a surviving spouse within the meaning of §

31-1-102(b). "Divorce or annulment" does not include a decree of separation that does not terminate the marriage of the parties.

SECTION 17. Tennessee Code Annotated, Section 35-15-1005, is amended by deleting the section and substituting instead the following:

(a) A beneficiary, trustee, trust advisor, or trust protector shall not commence a proceeding against a trustee, former trustee, trust advisor, or trust protector for breach of trust more than one (1) year after the earlier of:

(1) The date the beneficiary, trustee, trust advisor, or trust protector or a representative of the beneficiary, trustee, trust advisor, or trust protector was sent information that adequately disclosed facts indicating the existence of a potential claim for breach of trust; or

(2) The date the beneficiary, trustee, trust advisor, or trust protector or a representative of the beneficiary, trustee, trust advisor, or trust protector possessed actual knowledge of facts indicating the existence of a potential claim for breach of trust.

(b) For purposes of this section, facts indicate the existence of a potential claim for breach of trust if the facts provide sufficient information to enable the beneficiary; trustee; trust advisor; trust protector; or the representative of the beneficiary, trustee, trust advisor, or trust protector to have actual knowledge of the potential claim, or have sufficient information to be presumed to know of the potential claim or to know that an additional inquiry is necessary to determine whether there is a potential claim.

(c) If subsection (a) does not apply, a judicial proceeding against a trustee, former trustee, trust advisor, or trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trustee, former trustee, trust advisor, or trust protector;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(d) Notwithstanding subsections (a)-(c), no trustee, trust advisor, or trust protector may commence a proceeding against a trustee or a former trustee if, under subsection (a), (b), or (c), none of the beneficiaries would be entitled to commence a proceeding against a trustee or a former trustee for a breach of trust.

SECTION 18. Sections 3, 4, 5, 6, and 11 shall take effect January 1, 2017, the public welfare requiring it. All other sections shall take effect July 1, 2017, the public welfare requiring it.